

FIRST REGULAR SESSION

HOUSE BILL NO. 993

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAWSON.

Read 1st time March 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2243L.011

AN ACT

To repeal sections 630.170 and 660.317, RSMo 2000, relating to qualifications and disqualification of certain employees, and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 630.170 and 660.317, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 630.170 and 660.317, to read as follows:

630.170. 1. A person **listed on the department of mental health disqualified registry, a person listed on the division of aging employee disqualification list pursuant to section 660.315, RSMo, a person convicted of or who pleads guilty or nolo contendere to any crime [under] pursuant to section 630.155 or 630.160** shall be disqualified from holding any position in any public or private facility or day program operated, funded or licensed by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

2. A person convicted of **or who pleads guilty or nolo contendere to any felony offense against persons as defined in chapter 565, RSMo; of any felony sexual offense as defined in chapter 566, RSMo; of any felony offense defined in section 568.020, 568.045, 568.050, 568.060, 569.020, 569.025, 569.030, 569.035, 569.040 [or], 569.050, 569.070 or 569.160, RSMo, or of an equivalent felony offense, or any violation of subsection 3 of section 198.070, RSMo, or subsection 1 of section 630.165** shall be disqualified from holding any direct-care position in any public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department or any mental health facility or mental health

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 program in which people are admitted on a voluntary basis or are civilly detained pursuant to
17 chapter 632, RSMo.

18 **3. Any person who receives a suspended imposition of sentence (SIS) or suspended**
19 **execution of sentence (SES) following a plea of guilty to any of the disqualifying crimes**
20 **listed in subsections 1 and 2 of this section shall be disqualified.**

21 **4. Any person disqualified [under] pursuant to** the provisions of subsection 1 or 2 of
22 this section may appeal the disqualification to the director of the department or the director's
23 designee. The request shall be written and may not be made more than once every twelve
24 months. The request may be granted by the director or designee if in the judgment of the director
25 or designee a clear showing has been made by written submission only, that the person will not
26 commit any additional acts for which the person had originally been disqualified for or any other
27 acts that would be harmful to a patient, resident or client of a facility, program or service. The
28 director or designee may grant the appeal subject to any conditions deemed appropriate and
29 failure to comply with such terms may result in the person again being disqualified. Decisions
30 by the director or designee [under] **pursuant to** the provisions of this subsection shall not be
31 subject to appeal. The right to appeal [under] **pursuant to** this subsection shall not apply to
32 persons [convicted of] **who are disqualified as a result of being listed on the division of aging**
33 **employee disqualification list pursuant to section 660.315, RSMo, or to persons disqualified**
34 **from employment as a result of the commission of any crime [under] pursuant to** the
35 provisions of chapter 566 [or 568], RSMo, or section 565.020 [or], 565.021, **568.020, 568.060,**
36 **569.025 or 569.070, RSMo.**

37 **5. An applicant for a direct care position in any public or private facility, day**
38 **program, residential facility or specialized service operated, funded or licensed by the**
39 **department, or any mental health facility or mental health program in which persons are**
40 **admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo, shall:**

41 **(1) Sign a consent form as required by section 43.540, RSMo, to provide written**
42 **consent for a criminal records review;**

43 **(2) Disclose the applicant's criminal history. For purposes of this subdivision,**
44 **"criminal history" includes any conviction or plea of guilty to a misdemeanor or felony**
45 **offense and shall include any suspended imposition of sentence, suspended execution of**
46 **sentence or any period of probation or parole; and**

47 **(3) Disclose if the applicant is listed on the employee disqualification list as**
48 **provided in section 660.315, RSMo, or the department of mental health disqualified**
49 **registry.**

50 **6. Any person who receives a good cause waiver issued by the division of aging**
51 **pursuant to subsection 9 of section 660.317, RSMo, shall not require an additional**

52 exception pursuant to this section to be employed in a long-term care facility licensed
53 pursuant to chapter 198, RSMo.

54 7. Any public or private residential facility, day program or specialized service
55 licensed, certified or funded by the department shall, not later than two working days of
56 hiring a person for a full-time, part-time or temporary position to have contact with clients,
57 residents or patients:

58 (1) Request a criminal background check pursuant to section 43.540, RSMo;

59 (2) Make an inquiry to the department of social services as to whether the person
60 is listed on the employee disqualification list pursuant to section 660.315, RSMo; and

61 (3) Make an inquiry to the department of mental health as to whether the person
62 is listed on the disqualified registry.

63 8. The department shall maintain a disqualified registry and place on such registry
64 the names of any person who has been finally determined by the department to be
65 disqualified pursuant to this section. Such persons shall be prohibited from holding any
66 position in any public or private facility or day program operated, licensed or funded by
67 the department, or in any mental health facility or mental health program in which persons
68 are admitted on a voluntary or involuntary basis or are civilly detained pursuant to
69 chapter 632, RSMo.

660.317. 1. For the purposes of this section, the term "provider" means any person,
2 corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4 (2) Provides in-home services under contract with the department;

5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in
6 health care facilities; or

7 (4) Is an entity licensed pursuant to chapter 197, RSMo[;

8 (5) Is a public or private facility, day program, residential facility or specialized service
9 operated, funded or licensed by the department of mental health].

10 2. For the purpose of this section "patient or resident" has the same meaning as such term
11 is defined in section 43.540, RSMo.

12 3. Beginning August 28, 1997, not later than two working days of hiring any person for
13 a full-time, part-time or temporary position to have contact with any patient or resident the
14 provider shall, or in the case of temporary employees hired through an employment agency, the
15 employment agency shall prior to sending a temporary employee to a provider:

16 (1) Request a criminal background check as provided in section 43.540, RSMo.
17 Completion of an inquiry to the highway patrol for criminal records that are available for
18 disclosure to a provider for the purpose of conducting an employee criminal records background

19 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
20 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
21 shall not be construed to exempt a provider from further inquiry pursuant to common law
22 requirements governing due diligence; and

23 (2) Make an inquiry to the department of social services, whether the person is listed on
24 the employee disqualification list as provided in section 660.315.

25 4. When the provider requests a criminal background check pursuant to section 43.530,
26 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
27 of such record check.

28 5. An applicant for a position to have contact with patients or residents of a provider
29 shall:

30 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
31 request a criminal records review;

32 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
33 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
34 and shall include any suspended imposition of sentence, any suspended execution of sentence
35 or any period of probation or parole; and

36 (3) Disclose if the applicant is listed on the employee disqualification list as provided
37 in section 660.315.

38 6. An applicant who knowingly fails to disclose his criminal history as required in
39 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
40 A misdemeanor if the provider knowingly hires a person to have contact with patients or
41 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or
42 any other state or has been found guilty of a crime, which if committed in Missouri would be a
43 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection
44 3 of section 198.070, RSMo, or section 568.020, RSMo.

45 7. The highway patrol shall examine whether protocols can be developed to allow a
46 provider to request a statewide fingerprint criminal records review check through local law
47 enforcement agencies.

48 8. A provider may use a private investigatory agency rather than the highway patrol to
49 do a criminal history records review check, and alternatively, the applicant pays the private
50 investigatory agency such fees as the provider and such agency shall agree.

51 9. The department of social services shall promulgate rules and regulations to waive the
52 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
53 cause" means the department has made a determination by examining the employee's prior work
54 history and other relevant factors that such employee does not present a risk to the health or
55 safety of residents.